IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1408 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTILAL LALJI THAKKAR

Versus

CHAIRMAN BHUJ AREA DEVELOPMENTAUTHORITY

Appearance:

1. Special Civil Application No. 1408 of 2004

MR NALIN K THAKKER for Petitioner No. 1-2

MR NIKHILESH J SHAH for Respondent No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondent No. 2-3

MR ANSHIN H DESAI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 14/07/2004

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned advocate Shri N.J. Shah for respondent no.1, by learned A.G. Shri S.N. Shelat with learned A.G.P. Ms Maithili Mehta for respondents nos. 2 and 3 and by learned advocate Shri Anshin Desai for respondent no.4. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are residents of Bhuj, who have approached this Court with a grievance that Final Plot No. 1017 of Bhuj Town Planning Scheme no.4 has not been reconstituted properly, and on account of improper reconstitution of the said Final Plot, the petitioners would be loosing their tenancy right and the godowns/shops nos. 1, 2 & 5 occupied by them, which were situated in land bearing survey nos. 3559 and 3560.

3. The relevant undisputed facts giving rise to the present petition are as under:

4. The petitioners are tenants of respondent no.4. Respondent no. 4 was an owner of land bearing City Survey Nos. 3555, 3556, 3557, 3559, 3560 and 3561. The said Survey Nos were denoted as original plots nos. 963, 964, 965, 967, 968 and 969 in the draft town planning scheme. The said land admeasured 847.99 sq meters. In lieu of the aforestated original plots, respondent no. 4 has been allotted reconstituted final plot no. 1017 admeasuring 597.106 sq meters.

5. It is the case of the petitioners that upon reconstitution of Final Plot No. 1017, the petitioners shops/godowns would be now in Final Plot no. 1021 and the said Final Plot has been allotted to someone who is not their landlord. As a result of reconstitution, the petitioners will have to hand over possession of their shops/godowns and their apprehension is that they would also be loosing their tenancy right because of reconstitution of the plots.

6. Learned advocate Shri Nalin Thakkar appearing for the petitioners has submitted that the respondent authorities ought to have reconstituted the plots in such a manner that the area, which is in possession of the petitioners could have been given to respondent no. 4 so as to see that their tenancy rights are not affected and they are not called upon to hand over possession of their godowns/shops to the respondent authorities.

7. It has been further submitted by the learned

advocate that after destruction of the city of Bhuj on account of an earthquake, which had taken place on 26th January, 2001, under notification dated 9th May, 2001, respondent no. 1 authority had been constituted for rehabilitation of residents of Bhuj. It is his case that instead of rehabilitating the earthquake affected residents, the respondent authorities have made planning of the city in such a manner that several persons, who were not even affected by the earthquake, have been seriously affected because either their buildings would be destroyed or damaged on account of implementation of town planning scheme no. 4 of Bhuj. It has been therefore submitted that the main purpose with which the scheme has been made and respondent no. 1 authority has been constituted has been frustrated.

8. It has been further submitted that it was possible for the respondent authorities to reconstitute Final Plot no. 1017 at the place where its corresponding original plots were situated. It has been also submitted that looking to the vast open land available in the vicinity, it was possible for the respondent authorities to have a different planning so as to see that the tenancy rights of the petitioners are not adversely affected. It has been further submitted that when the respondent authorities are given powers under the provisions of Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"), the said powers are coupled with duty. It is also their duty to see that least number of persons are adversely affected because of the scheme made by them under the Act. It has also been alleged that the powers have been exercised by the respondent authorities without performing their duties and, therefore, the action of making the scheme is not only arbitrary but is also bad in law.

9. It has been therefore prayed in the petition that the respondent authorities should be directed not to take possession of the land where the godowns/shops of the petitioners are situated and it has been also prayed that the Final Plot should be reconstituted in such a manner that respondent no. 4 remains the owner of the land occupied by the petitioners.

10. On behalf of the respondent authorities, it has been submitted that the submission made by the petitioners that the scheme has been made, or respondent no. 1 authority has been constituted, only for the purpose of rehabilitation of earthquake affected citizens of Bhuj is not correct. My attention has been drawn to

the notification dated 9th May, 2001 stating that respondent no.1 authority has been constituted so as to see that the people of Bhuj are rehabilitated and the city of Bhuj is reconstructed in a systematic manner.

11. It has been thereafter submitted that it is not possible for the respondent authorities to reconstitute the original plots under the provisions of Section 45 in such a manner that their area and boundaries are not changed. It has been submitted on behalf of the respondents that as a result of implementation of the scheme, normally, boundaries of all the original plots are changed. All possible efforts are made by the respondent authorities to see that the holders of original plots are not shifted to a different place and as far as possible Final Plot and original plot remain at the same place. However, in most of the cases, boundaries of original plot and Final Plot are different because, for the purpose of implementation of the scheme, the respondent authorities require more land for various purposes, under the scheme. Land is required to be reserved for gardens, parks educational institutions, hospitals etc. and, therefore, the original plot holders normally get less area of land in their Final Plots. In the instant case also, as a result of implementation of the scheme, respondent no. 4, who was the owner of original plots in question, has been deprived of some of his land, and as a result of reconstitution of the plots, the land, which was in possession of the petitioners will have to be given to someone else. Respondent no. 4 has lost approximately 29.58% of his land as respondent no. 4 is to be allotted Final Plot No. 1017 admeasuring 597.106 sq meters whereas sum total of his original plots was 847.99 sq meters. In the process of reconstitution of plots, the land, over which shops/godowns of the petitioners are constructed, has been now allotted to another person, namely, the person who has been allotted Final Plot No. 1021. It has been submitted on behalf of the respondent authorities that due care was taken at the time of making the scheme and it has been denied that the scheme has been made in an arbitrary or illegal manner. It has been also submitted by them that all possible efforts were made to see that least harm is caused to the residents of Bhuj city in the process of town planning.

12. It has been thereafter submitted on behalf of the respondents that the apprehension of the petitioners that they would be loosing their tenancy right is not correct.

13. The provisions of Section 81 of the Act have been referred to by the learned advocates appearing for the

respondents. It has been submitted that if the petitioners were having any right in the original plots, unless their right is such that it would be extinguished, the petitioners would be having the same right in the Final Plot as well. It has been submitted that if the petitioners feel that they would not be given tenancy right in the Final Plot, they should take action in accordance with law against respondent no. 4, who is their landlord.

14. I have heard the learned advocates and have also perused the relevant maps showing the location of the original plots and the Final Plot.

15. It is not correct to say that Town Planning Scheme no. 4 of Bhuj has been made only for the purpose of rehabilitation. Upon perusal of government notification dated 9th May, 2001, it is very clear that the scheme has been made for the purpose of having systematic development and for the purpose of reconstruction of Bhuj city. The object clause in the said notification reads as under:

> AND WHEREAS, with the approach of the monsoon, it has become extremely necessary for the towns to the developed in a systematic manner but with faster implementation of the earthquake rehabilitation programme.
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> AND WHEREAS, in this background of trauma and devastation, it does not appear to be fair to expect the urban local bodies to be able to cope with the pressing needs of urgent planning and reconstruction of the housing stock, the need for creation of an area development authority was felt necessary. This authority is expected to carry out modern planning, repair and reconstruction of the infrastructure plans for new infrastructure and for facilitating the new reconstruction activity in the towns including the towns where temporary shelters have been provided. The authority will have experts on its Board and will rely on expert advise for its decision making.
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> AND WHEREAS, in respect of providing civic amenities of the existing areas of the respective local authorities specified in the Schedule appended hereto, the same shall be provided by the existing local authorities and in the areas of such local authorities where the new

settlement and the new infrastructure planned by the Area Development Authority shall subsequently be handed over to such local authorities at the end of the period of operation of such authority.

16. Thus, it is very clear that the purpose with which Bhuj Area Development Authority has been constituted is to see that Bhuj is developed in a systematic manner. The authority is also expected to carry out modern planning, repair and reconstruction of infrastructure for facilitating systematic development of the city.

17. Thus, it is clear that in the process of reconstruction and planning, the normal concepts adopted in the process of town planning would be implemented and, therefore, the area of the original plot and the Final Plot may not remain the same. Normally, the size of Final Plot becomes smaller than the original plot because the authorities require land for several purposes like widening of roads, reservation for schools, gardens, hospitals etc. and, therefore, deduction of certain extent of land from each original plot is resorted to.

18. In the instant case also, respondent no. 4, who is the owner of the land in question, has lost 29.58% of his land, but he has not made any grievance as a law abiding citizen, but the tenants, whose lands will be taken over by the respondents authorities so as to allot the same to another plot-holder, have approached this Court.

19. It is pertinent to note that according to the provisions of Section 81 of the Act, any right, which a person has in the original plot, which is capable of being transferred wholly or in a part, is transferred to the Final Plot.

20. Section 81, which deals with the rights of a person in respect of the original plot, reads as under:

"81. Any right in an original plot which in the opinion of the Town Planning Officer is capable of being transferred wholly or in part, without prejudice to the making of a town planning scheme, to a final plot shall be so transferred and any right in an original plot which in the opinion of the Town Planning Officer is not capable of being so transferred shall be extinguished:"

21. Looking to the provisions of Section 81 of the Act, if respondent no. 4 is not giving tenancy right to the petitioners over the Final Plot, which has been allotted to him, the petitioners can take appropriate action in accordance with law. In the instant case, this Court has not to decide the rights of the parties because this Court is not concerned with the tenancy rights, if any, which the petitioners are having in the land in question.

22. The prayer with regard to giving the Final Plot to respondent no. 4 in such a manner that the land occupied by the petitioners as tenants is allotted to respondent no. 4 cannot be accepted by this Court. It is a matter of planning with which respondent no. 1 authority is concerned. Normally, this Court would not interfere in the mater of planning unless it is established that the scheme has been made in an absolutely arbitrary or illegal manner.

23. In the instant case, there is nothing to show that the scheme has been made with a malafide intention. Normally in of all town planning schemes, the owner of the original plot gets a smaller plot by way of a Final Plot and boundaries of the original plot are normally changed as a result of reconstitution of the plot. If, as a result of town planning, respondent no. 4 landlord has been given a smaller plot, and if the tenants have to vacate the land in question, which is to be now allotted to another person, it cannot be said that the respondent authorities have acted with malice or in an arbitrary manner.

24. Looking to the said fact, there does not appear to be any substance in the petition and, therefore, the petition deserves rejection.

25. At this stage, learned advocate Shri Nalin Thakkar has submitted that it is the policy of the respondent no.1 authority to permit the persons, who are adversely affected because of implementation of the scheme, to have some land on temporary basis. In other words, it has been submitted by him that if it is a policy of the respondent authorities to give on temporary basis, some open plot to the petitioners, who will have to vacate the land in question, respondent no. 1 authority be directed to allot some land to the petitioners so as to enable them to do their business. If there is such a policy, it would be open to the petitioners to approach respondent no.1 with a prayer that they may be given some land so that they can store

their goods for some time till the petitioners make regular arrangement for doing their business either at the Final Plot allotted to respondent no.4 or at any other place.

26. It has been further submitted by learned advocate Shri Nalin Thakkar appearing for the petitioners that if respondent no. 1 authority is allotting shops or plots to the persons who have been affected because of implementation of the scheme, the respondent authority be also directed to allot plots or shops to the petitioners so that they can do their business at the place, which may be allotted to them on priority basis. If there is such a policy of respondent no. 1, the petitioners should approach respondent no.1 and I am sure that respondent no. 1 shall look in to the request, which may be made by the petitioners, in the matter of allotment of shops/plots to them.

27. Finally, learned advocate Shri Nalin Thakkar has submitted that as the petition is being rejected, the petitioner be given some time so that they can make alternative arrangements for shifting their goods etc. The said request has been resisted by the respondent authorities. However, looking to the facts of the case, it is directed that ex-parte ad-interim relief, which has been granted in favour of the petitioners, should be continued for a period of four weeks from today so as to enable the petitioners make alternative arrangements.

28. For the reasons stated hereinabove, as there is no substance in the petition, the petition is rejected. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

(A.R. DAVE, J.)

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